

In re TELECARD COMMUNICATIONS INTERNATIONAL, INC., Debtor.

No. 99-24811-BKC-RBR.

(Cite as: 2001 WL 1750774)

The IRS filed proof of claim for unpaid FICA taxes. Trustee objected to proof of claim, primarily on the basis that the Debtor, Telecard Communications International, Inc. (Telecard), was not the statutory employer and was not liable for the payment of these taxes. The trustee contended that since Telecard did not issue payroll checks to employees, it was not the statutory employer. The trustee contended that the entity responsible for issuance of payroll checks was the entity that bore sole responsibility for payment of payroll taxes. The Court, noting that the check-issuing entity did not act independently, had no employees and conducted no business other than the payment of the Debtor's expenses, concluded that the entity did not act independently and was not the statutory employer. The Court found that the Debtor was the statutory employer and was therefore liable for payment of the taxes. Objection to proof of claim was overruled.